

RECORD OF PROCEEDINGS

DATE OF HEARING : December 5, 2007 at 11.00 hrs
CASE No. : 62 of 2007
PETITIONERS : Brihan Mumbai Electricity Supply and Transport
Undertaking (“BEST”)
RESPONDENTS : None
MATTER : Petition filed by BEST seeking (i) post facto
approval for short-term power procurement
undertaken during April, May and June 2007,
exceeding margins (ii) approval of the transmission
losses and open access charges for intervening
transmission corridors as applicable at actuals up to
its network, (ii) clarification as to whether an
electricity trader, or the generator from which the
trader procures power, is an approved source for
power procurement by a distribution licensee, and
(iv) amendment of Clause 25.2 of the Maharashtra
Electricity Regulatory Commission (Terms and
Conditions of Tariff) Regulations, 2005 (“Tariff
Regulations”) under Regulations 84 and 85 thereof,
inasmuch as to modify the requirement of prior
approval for power procurement into post facto
approval, subject to prudence check by the
Commission

CORAM : Dr. Pramod Deo, Shri. A.V. Velayutham,
Shri. Subhash B. Kulkarni

BEST filed a Petition on November 8, 2007 seeking the aforesaid reliefs. The Commission scheduled the hearing in the matter for December 5, 2007 in the presence of The Tata Power Company Limited, Maharashtra State Electricity Distribution Company Limited, Maharashtra State Electricity Transmission Company Limited, Maharashtra State Power Generation Company Limited, Mula Pravara Electric Co-operative Society Limited, and four consumer representatives authorised on a standing basis under the Electricity Act, 2003 (“EA 2003”). Notices were issued accordingly.

2. At the hearing held in the matter on December 5, 2007, Shri. Harinder Toor, Counsel, appeared for BEST along with Shri. Atul G. Patil, Chief Engineer-BEST. On an enquiry made by the Commission, Shri. Patil submitted that during the months of April, May and June 2007, BEST has already procured more than 5% of the total quantum of power approved for procurement during the first quarter of FY 2007-08.

3. On the issue of whether an electricity trader is an approved source for power procurement by a distribution licensee, Shri. Harinder Toor submitted that Regulation 21.1 of the Tariff Regulations provides for regulations under Part-D thereto shall apply *“to electricity purchase and procurement by a Distribution Licensee from a Generating Company or Licensee or from any other source through agreement or arrangement for purchase of power for distribution and supply within the State.”* It was submitted that the term *“Licensee”* in the cited portion of Regulation 21.1, denotes the possibility of a licensed electricity trader to be an approved source for power procurement by a distribution licensee. Counsel further referred to Section 2(23), (26), (39), (70), (71) and Sections 12(c) and 14(c) of the EA 2003, and submitted that most of the power procurement transactions that BEST has undertaken during the months of April, May and June 2007, have been done with electricity traders who have obtained licenses under the EA 2003.

4. With respect to the relief seeking modification of the requirement of prior approval for power procurement, as mandated under Regulation 25.2 of the Tariff Regulations, into post facto approval, the Commission enquired of Shri. Toor as to whether the case of BEST is that the Tariff Regulations are inconsistent with the EA 2003. Shri. Toor submitted that the case of BEST is not that the Tariff Regulations are inconsistent with the EA 2003, but the Commission is vested with plenary powers under the EA 2003 to grant post facto approval to power procurement undertaken by a distribution licensee.

5. The Commission observed that the grant of post facto approval for power procurement undertaken by BEST shall require BEST to submit various data for scrutiny, and the due process of law involved with reception of comments/ objections/ suggestions from the public, need to be observed. The said approval cannot be granted under the present proceedings. In any case, in the forthcoming Annual Performance Review of MYT by BEST, the issue will get addressed with due process.

6. The Commission further observed that should BEST seek any amendment to Regulation 25.2 of the Tariff Regulations, the same should form separate proceedings which shall also require the due process of law involved with public participation.

7. Shri. Patil submitted that the main reason for initiating the present proceedings was to keep the Commission duly informed of BEST's power procurement from various electricity traders during April, May and June 2007. The actual demand of BEST has much exceeded the demand projections of BEST during the multi-year tariff determination process, which necessitated hasty power procurement. It was submitted that, as per the directions of the Commission, BEST shall seek post facto approval of the said power procurement during the Annual Performance Review of the multi-year tariff of BEST.

8. The Commission observed that the main issues concerning the Petition of BEST is similar in line with petitions filed by TPC and Reliance Energy Limited, which have already been heard. The present matter may be decided together with the said Petitions of TPC and Reliance Energy Limited.

The hearing in the matter concluded thereafter.

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List of Persons present at the hearing held on December 5, 2007

1. Shri. R.D. Pawar, BEST.
2. Shri. S.D. Darne, Dy CAO, BEST.
3. Shri. K.N. Rajgopal, Dy. Chief Engineer, BEST.
4. Shri. R.B. Bhardwaz, Asst. Engineer, BEST.
5. Shri. A.G. Patil, Chief Engineer, BEST.
6. Shri. S.N. Pawar, Asst. Engineer, BEST.
7. Shri. C.H. Shinde, Dy. Chief Engineer, BEST.
8. Shri. S.R. Khedkar, Div. Engineer, BEST.
9. Shri. S.G. Dhish, Suptd. BEST.
10. Shri. A.R. Talegoankar, Suptd, BEST.
11. Shri. M.T. Nair, CLA, BEST.
12. Shri. Harinder Toor, Counsel for BEST.
13. Shri. M.R. Dharaskar, Suptd, BEST.
14. Shri. S.D. Pawar, DEPM, BEST.
15. Shri. S.P. Goswami, DECGRF, BEST.
16. Shri. A.B. Ketkar, Advocate, M/s M.V. Kini & Co.